

FILED
Clerk
District Court

DEC 14 2006

1 For The Northern Mariana Islands
2 By _____
3 (Deputy Clerk)3
4
IN THE UNITED STATES DISTRICT COURT
5
FOR THE NORTHERN MARIANA ISLANDS

6 ROBERT D. BRADSHAW,

7 Case No. CV-05-0027

8 Plaintiff,

9 vs.

10 COMMONWEALTH OF THE NORTHERN
11 MARIANA ISLANDS, et. al.,

12 Defendants.

ORDER:

- 1) DENYING DEFENDANTS' MOTIONS
2) SUA SPONTE STRIKING PART OF
3) COMPLAINT; AND
3) SETTING TIME FOR FILING

13 **THIS MATTER** came before the court on December 7, 2006, for hearing of defendants
14 Commonwealth of the Northern Mariana Islands ("Commonwealth"), Nicole C. Forelli, William C.
15 Bush, D. Douglas Cotton, L. David Sosebee, Andrew Clayton, and Pamela S. Brown (collectively
16 "the AG defendants"). Plaintiff appeared *pro se* by telephone; the AG defendants appeared by and
17 through Deputy Attorney General Gregory Baka.

18 **THE COURT**, having considered the arguments of the parties, **DENIES** the AG defendants
19 motions to dismiss and *sua sponte* **STRIKES** part of the complaint. The court will consider each of
20 the AG defendants' arguments in turn.

22 **I. Standard of Review**

23 Under Federal Rule of Civil Procedure 12(b)(6), "[a] complaint should not be dismissed . . . 'unless it
24 appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would
25 entitle him to relief.' *Balistreri v. Pacifica Police Dept.*, 901 F.2d 696, 699 (9th Cir. 1990) (quoting
26 *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957)). "Dismissal can be based on the lack of a cognizable legal

1 theory or the absence of sufficient facts alleged under a cognizable legal theory.” *Id.* In reviewing the
 2 sufficiency of the complaint, the “issue is not whether a plaintiff will ultimately prevail but whether the
 3 claimant is entitled to offer evidence to support the claims.” *Scheuer v. Rhodes*, 416 U.S. 232, 236
 4 (1974). Accordingly, “[a]ll allegations of material fact are taken as true and construed in the light most
 5 favorable to the nonmoving party.” *Cahill v. Liberty Mutual Ins. Co.*, 80 F.3d 336, 337-38 (1996).
 6 Furthermore, because a *pro se* litigant is generally not held to the stringent standards and formal
 7 pleadings required by lawyers, the court will dismiss the complaint only if it appears “beyond doubt that
 8 the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.” *Haines*
 9 *v. Kerner*, 404 U.S. 519, 596 (1972) (quoting *Conley*, 355 U.S. at 45-46 (internal quotes omitted)). “All
 10 pleadings shall be so construed as to do substantial justice.” Fed. R. Civ. P. 8(f).

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12 **II. The Commonwealth is Not A “Person” for Purposes of 42 U.S.C. § 1983**

13 All 42 U.S.C. § 1983 actions against the Commonwealth have been dismissed. Accordingly,
 14 because plaintiff adhered to the court’s order and did not include any § 1983 actions against the
 15 Commonwealth, defendant Commonwealth’s motion to dismiss claims 1, 2, 3, and 4 on this basis is
 16 **DENIED**.

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18 **III. Alleged Violations of Criminal Statutes Provide No Basis for Civil Liability**

19 All claims brought against the moving defendants for violations of criminal statutes have
 20 been dismissed. Accordingly, because plaintiff adhered to the court’s order and did not include any
 21 claims for violations of criminal statutes against the AG defendants, the motion to dismiss on this
 22 basis is **DENIED**.

23

24 **IV. Failure to State A Claim for Violations of Right to Procedural Due Process**

25 The AG defendants argue that claim 2, 3, 4, 7, and 11 should be dismissed for failure to state
 26 a claim for violation of plaintiff’s right to procedural due process. These claims, however, were

1 either left unchanged or not materially altered from plaintiff's second complaint.¹ Accordingly,
 2 because this argument was not included in the AG defendants' first motion to dismiss, it was waived
 3 and the AG defendants' motion to dismiss on this basis is **DENIED**. If the AG defendants were
 4 permitted to piecemeal their arguments, then this case would never go to trial.²

5

6 **V. Failure to State A Claim for Violations of Right to Equal Protection**

7 The AG defendants assert that a dismissal of claim 1, 2, 3, 4, 7, and 11 is proper because they
 8 fail to state a claim for violation of plaintiff's right to equal protection. These claims, however, were
 9 either left unchanged or not materially altered from plaintiff's second complaint. Accordingly,
 10 because this argument was not included in the AG defendants' first motion to dismiss, it was waived
 11 and the AG defendants' motion to dismiss on this basis is **DENIED**. If the AG defendants were
 12 permitted to piecemeal their arguments, then this case would never go to trial.

13

14 **VI. Claims of Conspiracy Must Be Plead With Particularity**

15 The AG defendants assert that claim 7 must be dismissed because plaintiff failed to plead
 16 conspiracy with particularity. A conspiracy must be "plead with particularity as to which defendants
 17 conspired, how they conspired and how the conspiracy led to a deprivation of [plaintiff's]
 18 constitutional rights . . ." *Harris v. Roderick*, 126 F.3d 1189, 1196 (9th Cir. 1989). "This standard is
 19 not intended to be difficult to meet as it serves the limited purpose of enabling the district court to
 20 dismiss 'insubstantial' suits prior to discovery and allowing the defendant[s] to prepare an
 21 appropriate defense." *Id.* at 1195.

22 Plaintiff has met this heightened pleading requirement by explaining what he thinks

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24 ¹ In compliance with the courts order of September 8, 2006, plaintiff combined claims 6 and 11 of
 25 his second amended complaint into what is now claim 11 of his third amended complaint.

26 ² To the extent that the AG defendants argue the court should reconsider its order of September 8,
 2006, such motion must be made under either Federal Rule of Civil Procedure 59 or 60.

1 occurred. He identifies the defendants that he believes conspired, he explains how they conspired,
2 and he explains how the conspiracy injured him. In the complaint, plaintiff alleges that there is no
3 other reason for the actions of the AG defendants except for a conspiracy. Plaintiff alleges that the
4 postal receipts were fraudulent and because the two postal receipts were conflicting, the AG
5 defendants had reason to know that they were fraudulent. He also states that while one attorney
6 general could have been negligent by failing to notice the inconsistency, it would be highly
7 improbable that all the attorney generals that worked on the case would have missed the
8 inconsistency. This, along with the other allegations in claim 7 is sufficient to show that the
9 conspiracy is not "insubstantial." Accordingly, the AG defendant's motion to dismiss claim 7 is
10 **DENIED.**

11 **VII. Plaintiff Sustained No Damage to Support a RICO Claim**

12 The AG defendants argue that defendant has failed to allege any damage due to the alleged
13 RICO violation and therefore the court should dismiss claim 8. In regards to the moving defendants,
14 claim 8 was not altered in the third amended complaint. Accordingly, because this argument was not
15 raised in the AG defendants' first motion to dismiss, it was waived and the AG defendants' motion
16 to dismiss on this basis is **DENIED**. If the AG defendants were permitted to piecemeal their
17 arguments, then this case would never go to trial.
18

19 **VIII. The Court Lacks Jurisdiction to Refer These Allegations to a Criminal Prosecutor**

20 The AG defendants move the court to dismiss plaintiff's second claim and a portion of
21 plaintiff's prayer for relief because plaintiff's inclusion of ¶ 248 violates the court's order of
22 September 8, 2006. Paragraph 248 of the third amended complaint states, "Yet, AG Forelli refused
23 to order a criminal investigation and prosecution of Bisom / Sorensen though there was
24 incontrovertible court documents showing the presence of fraud / attempted fraud on the CNMI and
25 Bradshaw."
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1 The court's order of September 8, 2006 states that "the court strikes all allegations in the
2 complaint regarding defendant Brown's failure to investigate plaintiff's criminal complaint." Order
3 Regarding Motions Heard on August 10, 2006, at 20, No. 181 (Sept. 8, 2006). Accordingly, the
4 court's order relates to allegations against defendant Brown and not defendant Forelli. Furthermore,
5 this allegation, in connection to claim 2, is included to explain the entire sequence that plaintiff
6 alleges amounts to a civil rights violation. Accordingly, defendants' motion to dismiss plaintiff's
7 second claim is **DENIED**.

8 The AG defendants also move the court to dismiss plaintiff's prayer for relief for the
9 appointment of a special prosecutor. Because this is more appropriate as a motion to strike and
10 because even if plaintiff prevails, plaintiff has no such remedy, the court *sua sponte* orders that
11 paragraphs 2, 3, and 4 of plaintiff's prayer for relief be **STRICKEN**.

12

13 **IX. The AG Defendants are entitled to Absolute Prosecutorial Immunity**

14 The AG defendants also move the court to dismiss claims 2 and 3 because the AG defendants
15 have absolute prosecutorial immunity for claims based on a failure to investigate or prosecute. As
16 explained above, in considering claim 2 in its entirety, ¶ 248 is included to explain the entire
17 sequence that plaintiff alleges amounts to a civil rights violation. Accordingly, plaintiff in claim 2
18 makes no claim for relief for any failure to investigate or prosecute and the AG defendants' motion
19 to dismiss claim 2 on this basis is **DENIED**.

20 Furthermore, plaintiff's allegations in his second amended complaint that defendant Brown
21 failed to prosecute was dismissed. Accordingly, because plaintiff adhered to the court's order and
22 did not include any allegation that defendant Brown failed to investigate or prosecute, the AG
23 defendants' motion to dismiss claim 3 on this basis is **DENIED**.

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1 **X. The AG Defendants Are Entitled to Qualified Immunity**

2 The AG defendants argue that the court should dismiss claims 2 and 3 because the court
 3 erred when it ruled that the AG defendants were not entitled to qualified immunity and denied their
 4 first motion to dismiss. Such a motion must be made under either Federal Rule of Civil Procedure 59
 5 or 60 and not on a motion to dismiss. Accordingly, the AG defendants' motion to dismiss claims 2
 6 and 3 on this basis is **DENIED**.

7

8 **XI. The Court Lacks Subject Matter Jurisdiction**

9 The AG defendants assert that dismissal of claims 9, 14, and 15 is proper because the court
 10 lacks subject matter jurisdiction. The AG defendants make three arguments. First, the AG
 11 defendants argue that because the Commonwealth is not a "citizen" for purpose of diversity, the
 12 court may not have diversity jurisdiction. Second, the AG defendants assert that plaintiff's claims do
 13 not satisfy the amount in controversy requirement. Third, the AG defendants argue that the court
 14 lacks supplemental jurisdiction.

15 First, the AG defendants' contention that the court may never have diversity jurisdiction
 16 when the Commonwealth is a party to the case is not supported by precedent. While the AG
 17 defendants support their argument with *Dyack v. Northern Mariana Islands*, 317 F.3d 1030, 1037
 18 (9th Cir. 2003), the facts of that case are materially different from this one. In *Dyack*, the Ninth
 19 Circuit held that like states, the Commonwealth is not a citizen for diversity purposes. Accordingly,
 20 because plaintiff Dyack is a citizen of Canada, complete diversity was destroyed by the presence of
 21 the Commonwealth as a defendant. Here, however, plaintiff Bradshaw is not an alien of the United
 22 States; he is a citizen of the state of Idaho. Accordingly, because complete diversity exists when a
 23 citizen of one state sues a non-citizen of the United States, complete diversity exists in this case.
 24 Accordingly, the AG defendants' motion to dismiss claims 9, 14, and 15 on this basis is **DENIED**.

25 Second, the AG defendants contend that the amount in controversy requirement of damages
 26 of more than \$75,000 is not satisfied because plaintiff has, at most, suffered \$8,230 in damages.

1 While their motion does not specify as to which defendant the amount of controversy is not satisfied,
 2 one could reasonably conclude that plaintiff claims more than \$8,230. For example, in his complaint,
 3 plaintiff claims that defendant breached his employment contract by failing to provide a legal
 4 defense for him for ten years and during the pending appeal, resulting in financial loss, loss of
 5 professional reputation, and emotional and mental suffering due to the ongoing litigation and *pro se*
 6 representation for ten years. These damages, as well as the damages he alleges for the other claims
 7 may reasonably amount to more than \$75,000. Accordingly, the AG defendants' motion to dismiss
 8 claims 9, 14, and 15 on this basis is **DENIED**.

9 Furthermore, even if the amount in controversy requirement was not met, the court has
 10 supplemental jurisdiction under 28 U.S.C. § 1337 over claims 9, 14, and 15. While, the AG
 11 defendants assert that the court lacks supplemental jurisdiction because the court dismissed all
 12 claims over which it had original jurisdiction, such argument lacks merit because the third amended
 13 complaint contains several federal question claims. In addition, supplemental jurisdiction is proper
 14 in this case because the facts supporting claims 9, 14, and 15 are all part of a common nucleus of
 15 operative facts. *See United Mine Works v. Gibbs*, 383 U.S. 715, 725 (1966). Here, the facts all relate
 16 to the AG defendants' legal representation or lack of legal representation of plaintiff in the Bisom
 17 case. Accordingly, the AG defendants' motion to dismiss claims 9, 14, and 15 on the basis that the
 18 court lacks subject matter jurisdiction is **DENIED**.

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 20 **XII. Conclusion**

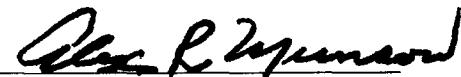
21 **FOR THE FORGOING REASONS**, the court **DENIES** the AG defendants' motions to
 22 dismiss. **MOREOVER**, as explained above, the court *sua sponte* orders that paragraphs 2, 3, and 4 of
 23 plaintiff's prayer for relief shall be **STRICKEN**.

24 Plaintiff may file a fourth amended complaint, if any, in accordance with this order and the Order
 25 Granting In Part and Denying In Part Defendant Bisom's Motion to Strike, No. 220 (Dec. 1, 2006). All
 26 defendants are **ORDERED** to file an answer within 20 days of the issuance of this order. The answer

1 is to be filed as if the ordered amendments have already been made and a fourth amended complaint has
2 been filed.
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IT IS SO ORDERED.

4 **DATED** this 14th day of December, 2006.
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7 ALEX R. MUNSON
8 Judge
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